

STATE OF MICHIGAN  
COURT OF APPEALS

---

KRISTEN A. KHURANA,  
Plaintiff-Appellee,

UNPUBLISHED  
April 26, 2007

v

SURESH P. KHURANA,  
Defendant-Appellant.

No. 268792  
Wayne Circuit Court  
LC No. 95-508858-DM

---

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. Plaintiff was a stay-at-home mother during the parties' 23-year marriage, and did not earn an income during that period. She apparently suffers from attention deficit disorder as well as a reading disorder. The 1995 judgment of divorce required defendant to pay plaintiff spousal support of \$2,000 per month for 120 consecutive months, or until she remarried, died, or resided and cohabited with an unrelated male, unless otherwise ordered by the court. A few months before the spousal support award was scheduled to expire, plaintiff moved to modify the judgment. Following a hearing, the trial court found that there were changed circumstances sufficient to justify an extension of the spousal support provision, and ordered defendant to continue paying alimony.

An award of alimony is generally modifiable, MCL 552.28, subject to certain exceptions, see, e.g., *Staple v Staple*, 241 Mich App 562, 568-569; 616 NW2d 219 (2000); *Bonfiglio v Pring*, 202 Mich App 61, 63; 507 NW2d 759 (1993). However, the modification of an alimony award "must be based on new facts or changed circumstances arising *after* the judgment of divorce." *Gates v Gates*, 256 Mich App 420, 434; 664 NW2d 231 (2003) (emphasis added). "The party moving for modification has the burden of showing such new facts or changed circumstances." *Id.*

The trial court erred in finding that inflation or an increased cost of living constituted a change of circumstances. While inflation may be a relevant consideration in determining whether a judgment of divorce should be modified, it is only one factor to be considered. *Rapaport v Rapaport*, 158 Mich App 741, 749; 405 NW2d 165, mod on other grounds 429 Mich 876 (1987). Here, the record does not contain any evidence concerning the impact of inflation on the parties' finances, and an increase in the cost of living, without more, is not a change of circumstances because it adversely affects both parties in the same way. *Ashburn v Ashburn*, 329 Mich 314, 317; 45 NW2d 298 (1951).

The trial court also erred in finding that plaintiff's inability to hold a steady job due to her disability constituted a change of circumstances. A post-judgment deterioration of health or condition "which hampers the ability of a wife to work may constitute a sufficient 'change of circumstances' to warrant an increase [or modification] in alimony." *Boyer v Boyer*, 30 Mich App 623, 625; 186 NW2d 842 (1971). However, the disability that allegedly affected plaintiff in the present case existed at the time of the divorce, and indeed throughout the marriage. It therefore did not arise "after the judgment of divorce." *Gates, supra* at 434.

Finally, while one party's ability to pay alimony may constitute a relevant factor in determining whether alimony should be increased upon a showing of changed circumstances, *Boyer, supra* at 626, defendant's continued ability to pay spousal support in this case does not itself constitute a change in the parties' circumstances.

I conclude that the trial court clearly erred in finding a sufficient change in circumstances to justify modifying and extending defendant's obligation to pay alimony in this case. *Gates, supra* at 432-433. I would reverse.

/s/ Kathleen Jansen